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Diplomatic Protection of American Investments Abroad

THE pending diplomatic controversy with Mexico over the land and oil law issue and the policing of Nicaragua by American troops have raised sharply the question of the responsibility of the United States Government for the protection of the investments of its citizens in foreign countries.

Although this is an old question in world politics, it is only within the last quarter century that it has had an important bearing upon American foreign relations. The United States throughout the greater part of its history has been a debtor nation depending upon English, French and Dutch investors for its capital requirements. It was not until after the outbreak of the World War that the United States assumed its present position as one of the leading creditor nations of the world. American investments in Latin America, Canada and the Far East, however, began in the nineties and ever since that time the question of the protection of American foreign investments by the government has become increasingly important.

To what extent is the United States committed to the protection of the foreign investments of its citizens? To what extent has it actually assumed this responsibility? What sanction for the protection of foreign investments exists in international law? What specific cases can be pointed to of American intervention for the purpose of protection of the property of American nationals? Does the policy of supervising loans carry with it responsibility for government protection?

These questions arise as a direct result of the rapid extension of American private investments into all parts of the world, particularly the so-called "backward" regions. At the end of 1926, American private investments had almost reached the enormous total of 13 billion dollars. The geographical distribution of American investments brings out the fact that out of the total of American capital holdings in foreign countries a large percentage is invested in Cuba, Mexico, Central America, South America, China and the Near East — regions where default is likely to lead to diplomatic or military intervention on the part of the United States.

The following table shows the percentage of distribution of American investments in various parts of the world:

Europe	28%
Canada	28%
Cuba	11%
Mexico	9%
Central America	1%
South America	15%
China, Japan and Philippines	6%
Miscellaneous	2%

GOVERNMENT INTERVENTION UNDER INTERNATIONAL LAW

Since there is no international law of bankruptcy, foreign creditors usually have been forced to trust their claims to the national courts of the debtor nation. This has generally proved unsatisfactory from the point of view of the creditor, and international law has traditionally upheld the use of reprisals in collecting debts owed by a foreign government to citizens of the state. Grotius, the father of international law, maintained this theory which was also supported by Vattel, who, however, qualified his statement by adding that such action is justified only when no relief can be obtained from the courts of the debtor country.

These general propositions have been modified by recent practice. A careful review of the actual practice of both England and the United States has led Borchard to the conclusion that there is a distinction in international law between punitive measures for the collection of private contract claims and of public debts. Borchard states that "a common contract claim can not give rise to the diplomatic interposition of the government unless, after an exhaustion of local remedies, there has been a denial of justice or some flagrant violation of international law."

The use of aggressive means has been resorted to with reluctance by the governments of the United States and England, according to Borchard:*

"The first reason is that the citizen entering into a contract does so voluntarily and takes into account the probabilities and possibilities of performance by the foreign governments. He has in contemplation all the ordinary acts which attend the execution of the contract."

The same idea was expressed in a more popular form by Sir Henry Campbell-Bannerman, Prime Minister of England, in a speech in the House of Lords in 1903:**

> "Nothing could be more mischievous than that we should even seem to accept the doctrine that when our countrymen invest in risky enterprises in foreign countries and default follows it is our duty to rescue them. Every man who invests in a country like Venezuela knows what he is doing. It would, I suppose, not be quite accurate to say that great risks always mean higher dividends, but it is more nearly accurate if you put it the other way about, that high dividends generally involve great risks. But if the whole power of the British Empire is to be put behind the British investor, the risk vanishes and the dividends ought to be reduced accordingly."

While the general propositions laid down by the fathers of international law grant to the investor nation the right, in extreme cases of default, to use force in the collection of the debts of its citizens, this general proposition has been modified in the case of the United States and Latin America by several general doctrines.

THE MONROE AND ROOSEVELT DOCTRINES

Most important of these from the point of view of the United States are the various recent interpretations placed upon the Monroe Doctrine, especially those advanced by President Roosevelt. Although he invoked the Monroe Doctrine, President Roosevelt went so far beyond the original statement of President Monroe that it may be possible to refer to the statement of his policies as the "Roosevelt Doctrine."

The original Monroe Doctrine was a warning to the European powers that the United States would consider any interference by them with any of the governments in the western hemisphere as an unfriendly act against the United States.

Secretary Olney in 1895, in his famous note to the British Foreign Office, which contained a threat of war against Great Britain unless she was willing immediately to arbitrate the boundary case with Venezuela,

*Borchard, E. M. The Diplomatic Protection of Citizens Abroad, p. 284.

**Hansard, Parliamentary Debates, Feb. 17, 1903, 4th series, Vol. CXVIII, p. 71.

greatly extended American policy by declaring that "today the United States is practically sovereign on this continent and its fiat is law upon the subjects to which it confines its interposition."

THE VENEZUELAN AFFAIR

The greatest change brought about in traditional American policy, however, was made by President Roosevelt. Previous to the joint blockade of Venezuelan ports by Great Britain, Italy and Germany in 1902, the United States had not protested under the Monroe Doctrine against Spain's war on Chile in 1866 and had permitted the temporary occupation of Mexico by Maximilian during the Civil War. President Roosevelt, however, in 1902, interpreted the Monroe Doctrine as placing responsibility upon the United States for the adjustment of claims between Venezuela and her European creditors. Germany, England and Italy made a naval demonstration against Venezuela for the purpose of forcing her to recognize the validity of certain claims of their subjects which she had refused to settle. In the case of Germany, the purpose of intervention was to collect claims which originated in a contract between German subjects and the government of Venezuela. One of the German claims was for the recovery of interest, seven years in arrears, on 5 per cent bonds for which the Venezuelan customs were pledged as security. The German Ambassador brought to the attention of the United States Government the nature of these claims and declared that the German Government had "no purpose or intention to make even the smallest acquisition of territory on the South American continent or the islands adjacent." This statement was made in order to prevent the intervention of the United States under the Monroe Doctrine.

On December 6, 1901, Secretary Hay in replying to the communication of the German Government, thanked that government for its voluntary declaration of policy and brought to the attention of the German Government the following reference to the Monroe Doctrine which was quoted from President Roosevelt's message of December 3, 1901:

> "The Monroe Doctrine is a declaration that there must no territorial aggrandizement by any non-American power at the expense of any American power on American soil. It is in no wise intended as hostile to any nation in the Old World. . . . This doctrine has nothing to do with the commercial relations of any American power, save that it in truth allows each of them to form such as it desires. . .. . "

The next year the three powers began hostilities against Venezuela by seizing her gunboats and blockading her ports. This brought the diplomatic intervention of the United States, and Venezuela was persuaded to recognize in principle the claims of the foreign powers and to refer them to mixed commissions for the purpose of determining the amounts of her obligations to the respective foreign governments. Great Britain and Italy agreed to this method of settlement, but Germany for a time refused to acquiesce. It was at this juncture that President Roosevelt delivered his famous ultimatum to the German Government, in which he declared that "within forty-eight hours there must be an offer to arbitrate or Dewey will sail with the orders indicated."*

ROOSEVELT AND SANTO DOMINGO

A more clear-cut statement of the "Roosevelt Doctrine" was made with reference to the Dominican Republic in 1905. Santo Domingo was at that time indebted to various European countries to the amount of 22 million dollars, 18 million of which was formally recognized in definite agreements dating from 1903 with Belgium and France, Germany, Spain and Italy. The contracts, hypothecating the revenues of many of the ports were not being carried out, and the foreign countries were threatening to enforce their right to the control of certain Dominican custom houses. The United States was asked to take charge of the collection of the revenues and of the determination of the amount of the debts, and President Roosevelt negotiated a treaty with the Dominican Republic, under which the United States undertook this responsibility. In transmit-

*Thayer, Life and Letters of John Hay, Vol. II, p. 286-88.

ting the treaty to the Senate for ratification, President Roosevelt declared the responsibility of the United States for this step in the following words:

> "Certain foreign countries have long felt themselves aggrieved because of the non-payments of debts due their citizens. . . . It has for some time been obvious that those who profit by the Monroe Doctrine must accept certain responsibilities along with the rights which it confers; and that the same statement applies to those who uphold the doctrine. . . . "

He asserted further that the United States had not the slightest desire for territorial aggrandizement at the expense of any of its southern neighbors.

> "The justification for the United States taking this burden and incurring this responsibility is to be found in the fact that it is incompatible with international equity for the United States to refuse to allow other powers to take the only means at their disposal of satisfying the claims of their creditors and yet to refuse, itself, to take any such steps.
>
> "An aggrieved nation can without interfering with the Monroe Doctrine take what action it sees fit in the adjustment of its disputes with American States, provided that action does not take the shape of interference with their form of government or of the despoilment of their territory under any disguise. But, short of this, when the question is one of a money claim, the only way which remains, finally, to collect is a blockade, or bombardment, or the seizure of the custom houses, and this means, as has been said above, what is in effect a possession, even though only a temporary possession, of territory. The United States then becomes a party in interest, because under the Monroe Doctrine it cannot see any European power seize and permanently occupy the territory of one of these republics; and yet such seizure of territory, disguised or undisguised, may eventually offer the only way in which the power in question can collect any debts, unless there is interference on the part of the United States."

President Roosevelt described the arrangements made with the various American and European bondholders, and said that the arrangements with the latter were approved by the Dominican Congress and several payments had been made toward the liquidation of the bonds held by the European holders.

> "The Dominican Congress refused to ratify the similar arrangement made with the improvement company (an American company), and the government refused to provide for the payment of the American claimants. In this state of the case it was evident that a continuance of this treatment of the American creditors, and its repetition in other cases, would, if allowed to run its course, result in handing over the island to European creditors, and in time would ripen into serious controversies between the United States and other governments, unless the United States should deliberately and finally abandon its interests in the island."

DIFFERENCE OF OPINION ON AMERICAN RESPONSIBILITY

Whether the United States is bound under the Monroe Doctrine, or any subsequent modifications thereof, is a question upon which opinion in the United States is divided. Dr. Leo S. Rowe, Director General of the Pan American Union, at the Institute of Politics in Williamstown, in 1924, said:

"There is no obligation under the Monroe Doctrine for the use of the army and navy of the United States to collect loans of Latin American governments made by foreign bankers."

On the other hand, Mr. Albert Straus, a New York banker, replied by saying that:

"If European nations are to respect our policy, which keeps them from applying physical force to recalcitrant debtors in the Americas, they will naturally expect us to see that the engagements of such debtors are met, and our government must therefore in appropriate cases be prepared to assume responsibility to that end or be content to allow foreign governments to apply pressure as they see fit in their own way."

President Roosevelt in an address at Chattauqua, New York, on August 11, 1905, made an official statement of the policy of the United States with reference to the defaulting South American countries as follows:

> "The Monroe Doctrine is not a part of international law, but it is a fundamental feature of our entire foreign policy so far as the western hemisphere is concerned. . . We do not intend to permit it to be used by any of these republics as a shield to protect that republic from the consequences of its own misdeeds against foreign nations . . . . inasmuch as by this doctrine we prevent other nations from interfering on this side of the water, we shall ourselves in good faith try to help those of our sister republics which need such help, upward toward peace and order. . . . I do not want to see any foreign power take possession permanently or tempor-

arily of the custom houses of any American republic in order to enforce its obligations and the alternative way at any time be that we shall be forced to do so ourselves."

THE DRAGO AND CALVO DOCTRINES

As a result of the attempt on the part of Germany, Great Britain and Italy to enforce upon Venezuela the payment of its debts to them and after the recognition on the part of President Roosevelt that the coercion of an American state was not contrary to the Monroe Doctrine provided that it did "not take the form of acquisition of territory by any non-American power," Luis Drago, Foreign Minister of Argentina, vigorously protested in a note dated December 29, 1902. The essential principle of this note, which later came to be called the "Drago Doctrine," was "that the capitalist who lends his money to a foreign state always takes into account the resources of a country and the probability, greater or less, that the obligations contracted will be fulfilled without delay. All governments thus enjoy different credit according to their degree of civilization and culture and their conduct in business transactions," and these conditions are measured before making loans. It is, therefore, up to the buyer of foreign bonds to assure himself that the object of his investment is sound before purchase.

In his original message, Drago contended that the "collection of loans by military means implies territorial occupation to make them effective, and territorial occupation signifies the suppression or subordination of the governments of the countries on which it is imposed."

This doctrine was approved by the Pan American Conference of 1906, and it formed the basis for the Convention against armed force for the recovery of contract debts which was adopted at the Hague Conference of 1907.

The Drago Doctrine was a restatement of the earlier Calvo Doctrine. According to the Calvo Doctrine, the smaller governments are not responsible for losses and injuries sustained by foreigners during internal disturbances. In stating this doctrine, Calvo argued that:

> "to admit the principle of indemnity would be to create an exorbitant and pernicious privilege essentially favorable to strong states, injurious to feebler nations, and to establish an unjustifiable inequality between nationals and foreigners. . . . To sanction such indemnity we should do, although indirectly, a deep injury to one of the constituent elements of the independence of nations, that of territorial jurisdiction."*

This principle was given sanction in international law by the Hague Conference of 1907. Upon the initiative of the United States it was declared that:

"The contracting parties agree not to have recourse to armed force for the recovery of contract debts claimed by the government of one country from the government of another country as being due to its nationals. This undertaking is, however, not applicable when the debtor state refuses to reply to an offer for arbitration, or after accepting the offer, prevents any 'compromise' from being agreed on, or after the arbitration fails to submit the award."**

AMERICAN INTERVENTION IN LATIN AMERICA

Apart from the general sanction accorded capital exporting countries for the protection of the property of their nationals in foreign countries, the United States has assumed many prerogatives with reference to the investments of its citizens in Latin-American countries, where from 1898 to 1927 this country has landed troops on a number of occasions. There are very few, if any, cases, however, where intervention can be accounted for solely upon the grounds of protection of American investments. Although the desire for government protection of investments may be an important factor in the immediate causes of intervention, there have been usually many other more obvious reasons for military action. These may be roughly classified as follows:

1. Intervention for strategic necessity. This has been the prominent factor in the whole history of American relations with Nicaragua, Panama and in the Caribbean in general.

2. Intervention on account of banditry

*This position, according to Inman, was taken in a treaty signed by Peru and Argentina in March, 1874.

**Convention respecting the limitation of the employment of force for the recovery of contract debts. Treaties of the U. S. II:2254.

and general disorder. Intervention for this reason has taken place in Nicaragua, Mexico, Haiti and Santo Domingo.

3. Intervention under the "Roosevelt Doctrine" to enforce the payment of obligations to European creditors. The most conspicuous examples of intervention for this reason are those of Haiti and Santo Domingo.

4. Landing of troops at the invitation of the native government. The most recent example of this form of military action is the case of Nicaragua at the present time. The United States was asked by President Diaz to send troops into the country for policing purposes, and for the protection of American and foreign lives and property. Other reasons, of course, have influenced United States policy in Nicaragua.

SUPERVISION OF LOANS BY STATE DEPARTMENT

In the opinion of many, the responsibility of the United States Government for the foreign investments of its citizens has been greatly extended and increased by the advisory power assumed by the Department of State with reference to foreign loans. Prior to 1914 the volume of American loans was of little importance, and the government rarely exercised any influence in determining what loans should be made. The first attempt on the part of the Department of State to assume such powers was made at the outbreak of the war when Secretary Bryan opposed the granting of loans to the belligerents. This protest was generally disregarded and as Mr. Bryan soon left the Cabinet, the State Department made no attempt to enforce it. A second step toward the assumption of a measure of control by the government was embodied in the "Trading with the Enemy Act," which conferred extensive power upon the government with reference to granting loans.

These two preliminary steps toward the supervision of private loans by the government were only temporary war-time measures, and it was not until 1922, at a conference in Washington between President Harding and several American bankers, that the President requested that "because of the vital influence upon our future foreign relations, it is the desire of the government that it be duly and adequately informed regarding such transactions, viz, the flotation of foreign bonds in the American market before their consummation, so that it might express itself regarding them, if that should be requested or seem desirable."

This request was later repeated in an announcement by the State Department in March, 1922, which reads in part as follows:

> "The flotations of foreign bond issues in the American market are assuming an increasing importance, and on account of the bearing of such operations upon the proper conduct of affairs, it is hoped that American concerns that contemplate making foreign loans will inform the State Department in due time of the essential facts and subsequent developments of importance. . . . Responsible American bankers will be competent to determine what information they should furnish and when it should be supplied. . . . The Department of State cannot of course require American bankers to consult it. . . . The Department believes that in view of the possible national interests involved, it should have the opportunity of saying to the underwriters concerned, should it appear advisable to do so, that there is or is not objection to any particular issue."

Needless to say, this power which is exercised by the Department of State is not mandatory, but, as Mr. John Foster Dulles has stated:*

> "While thus nominally a request, the source from which it emanated was such that the request in fact became a command. Selfish considerations alone rendered compliance virtually obligatory as no banker could afford to contract to purchase a bond issue of important size with the possibility that, before distribution could be completed, the Department of State might publicly indicate its disapproval. This would at once destroy the marketability of the issue. Bankers are but a channel for the distribution of securities and when a contract is made for the purchase of a foreign issue, it is with the expectation that the issue can promptly be distributed to investors. If, before distribution, any official expression of disapproval rendered the issue unmarketable, a substantial part of the bankers' capital would be engaged in carrying indefinitely bonds acquired for prompt resale to the investing public. Any banking firm thus involved would be largely disenabled from continuing its normal activities and serious financial loss might result. Such practical considerations are, however, in most cases secondary. There is, generally

*Foreign Affairs, October, 1926.

speaking, a real willingness on the part of American bankers to subordinate their interest in aid of the attainment of important national objectives in the field of international relations."

To what extent this supervisory power binds the United States Government to the protection of the loans made under its supervision is an open question. On the one hand it is contended that if loans are made to foreign countries under the supervision of the United States Government, the Government thereby places its sanction upon the terms of the loan and becomes in part responsible for its repayments. On the other hand, it is argued that this is a purely administrative arrangement which in no way binds the United States Government. According to this point of view, the United States can only be bound by treaties whereby she formally assumes this obligation, and these treaties must go through the ordinary constitutional process of ratification by the Senate. Such is, of course, not the case with respect to the supervision exercised under the State Department's regulation.

RESPONSIBILITY UNDER BANKERS' LOAN CONTRACTS

The State Department has at times put itself in the position of appearing to be implicated with American bankers in assuming responsibility for the collection of loans made to small governments. The loan made to the Republic of San Salvador in 1922 has been cited as an example. The security for the loan is a "first lien on 70 per cent of the customs revenues which are collectable in United States gold" and will be collected by a New York banking institution through its representative in San Salvador.

Article 9 of this contract, which was approved by the Secretary of State, contains the following provision:

> "In case there shall at any time arise between the Republic, the fiscal agent, and the fiscal representative, or any of them, any disagreement, question or difference of any nature whatever regarding the interpretation or performance of this contract such disagreement, question, or difference shall be referred to the Chief Justice of the Supreme Court of the United States of America, through the Secretary of State of the United States of America, for determination, decision, and settlement by such Chief Justice, and the parties hereto severally agree that any determination, decision, or settlement made by such Chief Justice shall be accepted by them as final."

The bankers, in advertising their bonds for sale, say in their circular:

> "It is simply not thinkable that, after a Federal judge has decided any question or dispute between the bondholders and the Salvador Government, the United States Government should not take the necessary steps to sustain such decision. There is a precedent in a dispute between Costa Rica and Panama, in which a warship was sent to carry out the verdict of the arbiters."

POSITION OF THE STATE DEPARTMENT

Because of the public notice attracted both in the daily press and by the advertising of the bankers, the State Department issued the following statement, declaring that it was not bound by the terms of the contract with San Salvador:*

> "The attention of the department has been called to statements, both in the advertising of the recently concluded loan to Salvador and in the press, which have created an erroneous impression regarding the relation of the United States Government to the loan.
>
> "It has been stated that a secret agreement has been made by the Department of State. This is a misleading statement, as the agreement was negotiated between the Government of Salvador and the representatives of the bankers concerned. It is in no sense a treaty.
>
> "The Department of State has no relation to the matter except with respect to facilitating the arbitration and determination of disputes that may arise between the parties and the appointment of a collector of customs in case of default. It is manifestly to the interest of peace and justice that there should be an appropriate method of deciding such controversies as might arise, and at the specific request of the Government of Salvador and the interested bankers the Secretary of State has consented to use his good offices in referring such disputes to the Chief Justice of the Supreme Court of the United States, or, if he is unable to act, to another member of the Federal judiciary for appropriate arbitrament."

Mr. Lewis Gannett, of the *Nation,* in testifying before the sub-committee of the

*Foreign Loans—Hearings before the Subcommittee of the Committee on Foreign Relations—U. S. Senate, 68th Cong. 2nd Session, pursuant to S. Con. Res. 22. Feb. 25 and 26, 1925—Washington, Gov't. Printing Office—1926. p. 3.

Committee on Foreign Relations of the United States Senate, on February 25, 1925, criticized the statement of the Department of State by declaring it to be "a misleading statement." He said:

> "The contract between the Republic of Salvador and the bankers was submitted to the State Department before it was negotiated. The State Department had asked the privilege of seeing it. . . . so that it might express itself regarding its terms. Presumably it did express itself. Presumably it expressed its consent both to the clauses regarding the appointment of the collector of customs and to the agreement to refer disputes for arbitration to the Chief Justice of the United States Supreme Court. Further than that it was in no way bound contractually. But the bankers' statement was not, I think it is fair to say, a fraudulent statement. It did not say that the United States would take the necessary steps by force to sustain such action. It said, 'It is simply not thinkable that, after a Federal judge has decided any dispute between the bondholders and the Salvador Government, the United States Government should not take the necessary steps to sustain such decision.' And it further stated that 'There is a precedent in a dispute between Costa Rica and Panama in which a warship was sent to carry out the verdict of the arbitrators. . . . "

The Commercial and Financial Chronicle takes a contrary view to that held by Mr. Gannett:*

> "The Department of State has no relation to the matter except with respect to facilitating the arbitration and determination of disputes that may arise between the parties and the appointment of a Collector of Customs in case of default. It is manifestly to the interest of peace and justice that there should be an appropriate method of deciding such controversies as might arise, and at the specific request of the government of Salvador and the interested bankers, the Secretary of State has consented to use his good offices in referring such disputes to the Chief Justice of the Supreme Court of the United States, or if he is unable to act, to another member of the Federal Judiciary for appropriate arbitrament.
>
> "Also at the request of the government of Salvador and the interested bankers, the Secretary of State consented to assist in the selection of the Collector of Customs who, according to the loan contract, is to be appointed in case of default. This was simply for the purpose of facilitating the choice of an entirely competent and disinterested person. The contract also provides that the Collector of Customs, if appointed, will communicate to the Department of State for its records such regulations relating to the customs administration as may be prescribed, and also a monthly and annual report. The government of the United States has no relation to the loan except in these particulars."

*Ibid ,p. 130.

EXTENT OF BANKERS' CONTROL

Some of the loans virtually place the entire financial control of certain Latin-American countries in the hands of the New York bankers, and it is charged that this close control is bound sooner or later to lead to serious dissatisfaction on the part of the people of the borrowing nation, and that in such a case, American citizens who have invested their money are certain to call upon the State Department for aid. An example of the sweeping nature of some of these bankers loan contracts is afforded by the agreement between the Republic of Bolivia and a New York banking institution. This loan is secured "by a first lien or pledge and charge upon all the funds, revenues and taxes hereinafter mentioned." In addition to pledging all of the shares of the National Bank of Bolivia as security, the loan contract pledges all dividends payable upon control of the National Bank of Bolivia and all other sources of income as follows:

The tax upon mining claims or concessions.

Revenues received by the Republic from alcohol monopoly.

Ninety per cent of revenues received by the Republic from the tobacco monopoly.

The tax on corporations other than mining and banking.

The tax upon the net income of banks.

The tax on interest on mortgage cedulas.

The tax on the net profits of mining companies.

All import duties, surcharge on import duties and all export duties.

A first mortgage upon two of the railroads now under construction and pledges upon the net income of the railways.

The Republic further agrees that if in any way the revenues from the foregoing pledged securities shall not equal one and

one-half times the amount required for the annual service of the loan it will at once pledge additional securities.

Article V, Section 1, of the contract provides that so long as these bonds remain outstanding the collection of all taxes, revenues and income of the Republic will be supervised by a permanent fiscal commission to be appointed by the President. The Commission will consist of three commissioners of whom two will be appointed upon the recommendation of the bankers. One of the commissioners appointed upon the recommendation of the bankers will be chairman and chief executive of the commission.

Although the United States is in no way explicitly involved by the terms of this contract, it is, however, as Mr. Gannett in his testimony before the sub-committee on Foreign Relations declared:*

"... a contract in which so much power is turned over to American citizens that it prevents the Bolivians from maintaining any degree of independence for their country. If we are to judge from our experience in Haiti, Salvador and Guatemala, it seems possible, not to say probable, that we will ultimately become implicated in something like enforcement of that contract."

THE UNITED STATES AS A DEBTOR NATION

Throughout its history prior to the World War the United States was a debtor nation depending upon European countries for the capital with which to develop its industries. The record of this country as a debtor nation has not been free from instances of debt repudiation. The Corporation of Foreign Bondholders, of Great Britain, in the Annual Report of the Council for 1925 lists 75 million dollars on the principal of defaulted obligations of eight American States:

Name of State	Description of Debt	Approximate Amount in Default
Alabama	Guarantee to Railways, etc.	$13,000,000
Arkansas	Principally Railway Guarantees estimated at	8,700,000
Florida	Bonds issued to establish Banks and for Railway Guarantees estimated at	8,000,000
Georgia	Principally Railway Guarantees estimated at	13,500,000
Louisiana	"Baby Bonds" Railway Guarantees and certificates of Claim issued under Settlement of 1874, estimated at	6,000,000
Mississippi	Planter's Bank bonds, 1831-3, ... $2,000,000 Union Bank bonds, 1838 ..... $5,000,000	7,000,000
North Carolina	Special Tax Bonds and Railway Guarantees estimated at	13,000,000
South Carolina	No details available—estimated at	6,000,000
		$75,200,000

The States that are still in default and the principal of their debts with estimated interest, as compiled by Moody's Investors Service, is shown as follows: (Moody's includes also the Former Confederate States 7% Cotton Loan).**

Alabama	$ 13,000,000	$ 42,900,000	$ 55,900,000
Arkansas	8,700,000	28,710,000	37,410,000
Florida	8,000,000	26,400,000	34,400,000
Georgia	13,500,000	44,550,000	58,050,000
Louisiana	6,000,000	19,800,000	25,800,000
Mississippi	7,000,000	24,100,000	31,100,000
North Carolina	13,000,000	42,900,000	55,900,000
South Carolina	6,000,000	19,800,000	25,800,000
Former Confederate States 7% Cotton Loan	12,094,000	53,334,540	65,428,540
Total United States	$ 87,294,000	$ 302,494,540	$ 379,788,540

*Ibid, p. 6.
**Moody's Investor's Service—18th Year. n. 102, December 23, 1926. p. 409.

This by no means represents the total amount of losses suffered by foreign lenders to the United States, since heavy losses were also undergone by investors in American railways and industrial enterprises, and many States which were in default made compromise agreements whereby a portion of their obligations were paid to foreign bondholders.

STATEMENT OF FOREIGN BONDHOLDERS

The Corporation of Foreign Bondholders has the following to say in regard to these repudiations:*

> "During the past year a good deal of attention has been drawn to the surprising fact that several of the States composing the great American Union are in total default of their debts—debts which, the Council again points out, were not contracted during the Civil War or issued for war purposes.
>
> "It has been officially stated that the United States expects to receive more than £4,000,000,000 from its European debtors in the next 62 years, and that, meantime, taxation is being largely reduced. It therefore seems a strange anomaly that while the United States is insisting so strongly on the obligation of foreign countries to repay the money they borrowed from her in order to win the war, and which was mainly expended in the purchase of war material from American manufacturers, several of her own States should allow their own obligations to remain unpaid.
>
> "The talk about the frauds perpetrated by carpet-bag governments has doubtless done far more to extenuate the conduct of the defaulters in the eyes of the general public than anything else. So much has been said on that score that it is the common impression that all, or nearly all, the bonds in question have had that origin. Such, however, is by no means the fact. . . Mississippi's bonds have been in default since 1842 . . . . Most of Louisiana's liabilities preceded the war, as did a large portion of those of Alabama, Georgia, Florida, and the two Carolinas. . . . Nor is it the fact that the whole of the so-called carpet-bag bonds were fraudently or unwisely issued. The proceeds were mostly invested in railroads and other public improvements greatly needed, and at the time generally demanded by citizens of all shades of political opinion. . . . The substance of the whole matter is that the States of the American Union owe a very large sum of money which they are perfectly able to pay, which they ought to pay, and which they cannot by any of the usual processes employed against delinquent debtors be made to pay. . . "

*Annual Report of Council, p. 52.

NORTH AND SOUTH AMERICAN "CARPET-BAG" GOVERNMENTS

While it is true that many of these debts were contracted under the so-called "carpet-bag" governments and that legal obstructions were built up by the defaulting American States in order to justify their conduct, the principle involved is very similar to the one now at issue at frequent intervals between the United States and the defaulting debtor governments of Latin America. The so-called "carpet-bag" governments might compare favorably with various Latin-American governments that have from time to time assumed control of governmental affairs and issued bonds beyond the ability of the State to redeem. The situation, as far as the United States is concerned, has been especially difficult in the case of the foreign lenders because no legal recourse is offered under the American constitutional system.

Originally, under Article III, Section 1, of the Constitution of the United States, the judicial power of the United States was given authority as between any State and foreign States, citizens or subjects. This, however, was denied by the eleventh amendment to the Federal Constitution, so that the Federal Government is unable to enforce, as regards States, the provision of its Constitution upholding the sanctity of contracts. The State cannot be sued without its own consent, and American States have been very reluctant to consent to being sued by the foreign bondholders.

After the panic of 1837 this question was vigorously debated in Congress and it was proposed that the Federal Government assume the debts of the States. In this connection the following resolution introduced by Mr. John Quincy Adams, formerly President of the United States and a member of Congress from Massachusetts, is of interest, despite the fact that it failed of adoption.

> "Resolved, That the repudiation by any State of this Union of any debt to foreigners, contracted by authority of the legislature of said State, is a violation of the Constitution of the United States, in the first paragraph of the tenth section of the first article, which provides that no State shall pass any law impairing the obligation of contracts.
>
> "Resolved, That if any State of this Union, by or in consequence of such repudiation, in-

volve herself in war with any foreign power, the Congress of the United States has no power to involve them or any other of the States of this Union, or the people thereof, in such a war.

"Resolved, That in the event of such a war, the State involving herself therein will cease thereby to be a State of this Union, and will have no right to aid in her defense from the United States, or any one of them."*

THE SHIPSTEAD RESOLUTION

Anti-imperialist groups have frequently sought some legal or constitutional method of prohibiting the executive branch of the government from involving the United States in any way in commitments which might lead to armed intervention. Legislative measures were first proposed by Senator Ladd in the 68th Congress. By the terms of Senator Ladd's resolution the President is requested to direct the Departments of State, Treasury and Commerce, Federal Reserve Board and all other agencies of the government which are or may be concerned to refrain, without specific authorization of Congress, from:

"(1) Directly or indirectly engaging the responsibility of the Government of the United States, or otherwise on its behalf, to supervise the fulfillment of financial arrangements between citizens of the United States and sovereign foreign Governments or political subdivisions thereof, whether or not recognized de jure or de facto by the United States Government, or

"(2) In any manner whatsoever giving official recognition to any arrangement which may commit the Government of the United States to any form of military intervention in order to compel the observance of alleged obligations of sovereign or subordinate authority, or of any corporations or individuals, or to deal with any such arrangement except to secure the settlement of claims of the United States or of United States citizens through the ordinary channels of law provided therefor in the respective foreign jurisdictions, or through duly authorized and accepted arbitration agencies."

This resolution has in substance been reintroduced in the last Congress by Senator Henrik Shipstead of Minnesota.

The fundamental nature of the resolution is self-explanatory. It says in brief that if citizens of the United States make investments in foreign lands they do so at their own risk and without the sanction or the responsibility of the United States Government.

*Scott. The Repudiation of State Debts.

CRITICISM OF LADD AND SHIPSTEAD RESOLUTIONS

The attitude that private bankers in loaning money to unstable governments do so at their own risk and should not be allowed the military protection of the government is one which is favorably received by many liberal groups in the United States. Several practical objections, however, have been raised against such an official governmental policy.

In the first place, since the State Department has assumed broad powers in the supervision of the loans extended to foreign governments, it has been argued that they have thereby assumed a measure of responsibility for the protection of the loans to which they have given their sanction. If the State Department can prevent foreign loans from being granted for political reasons, it seems fair, so it is urged, that they assume the positive function of standing back of loans which they permit to be granted.

A second objection to the Ladd and Shipstead resolutions is that they would raise considerably the rate of interest which unstable governments would be forced to pay, and thereby hold back the economic development of the country in need of funds. If American bankers were forced to rely solely upon the judicial processes at their disposal in the borrowing country, it would be necessary for them to raise the interest rate to an extent commensurate with the additional risks assumed. The result, according to their critics, would be to remove America as a competitor for loans in these unstable countries because much more favorable terms could be secured from British bankers and the British Government would be alive to the protection of the interests of their citizens.

Moreover, it is argued that the United States is obligated under Roosevelt's interpretation of the Monroe Doctrine not to allow European governments to intervene in Latin America for the protection of the interests of their citizens, and in so prohibiting other nations from intervention, the ob-

ligation for the protection of British, French or German investments in Latin America falls upon the government of the United States. It is, therefore, paradoxical in the extreme for the United States to refuse government protection to the interests of its nationals, while it considers itself bound under the terms of the Monroe Doctrine to assume this obligation for foreign governments.

INTERNATIONAL VS. NATIONAL CONTROL

Since there is no international law of bankruptcy, it is necessary for the creditors to bring suit in the courts of the debtor country. As pointed out above, this has frequently proved unsatisfactory from the point of view of the creditor and has offered a temptation for diplomatic or military intervention. The fact that it is virtually impossible for foreign creditors to receive a fair hearing in the domestic courts of some backward countries, has led many careful observers to suggest that some form of international control be substituted for the present form of adjudication in the courts of the debtor country.

An example of this method of settling disputes between a defaulting government and its creditors, is shown by a loan granted to the government of Czechoslovakia by Baring Bros. & Co., Ltd., of London. The bankers' loan contract contains a provision that in case of disagreements between the bankers and the government of Czechoslovakia, the intervention of the Council of the League of Nations would be invited. A significant section of the contract between Baring Bros., and the government of Czechoslovakia is as follows:*

> "In the event that the government of Czechoslovakia does not fulfill its agreed obligations and in the event of the government and Baring Brothers and Co., Ltd., being unable to arrive at an arrangement mutually satisfactory, the Council of the League of Nations shall be empowered to make the best arrangements for the protection of the bondholders, provided that the previous consent of the majority of the value of the bondholders, at a meeting as provided in the General Bond, shall be obtained before any arrangement is accepted or the intervention of the Council of the League of Nations is invited."

*Monthly Summary of the League of Nations, May, 1922.

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